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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 31

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES,

Petitioner,

vs.

UNITED AIR LINES, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 801.

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES,

Petitioner,

vs.

UNITED AIR LINES, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

The opinion of the Court of Appeals for the Sixth Circuit is reported at 325 F. 2d 576. The opinion of the District Court is not reported. The opinions are printed as appendices to the petition.

QUESTION PRESENTED.

Petitioner labor organization represented certain employees of Capital Airlines, Inc., under a labor agreement. Upon the merger of Capital into respondent United Air Lines, Inc., these employees were functionally integrated into the larger comparable group of United employees,

part of whom were represented by a different labor organization. Under these circumstances does an action to declare United bound by the terms of the Capital labor agreement for the former Capital employees involve a representation and jurisdictional dispute under the Railway Labor Act with respect to which the federal courts do not have jurisdiction?

STATEMENT.

This proceeding arose out of the merger of Capital Airlines, Inc. into respondent, United Air Lines, Inc., on June 1, 1961, pursuant to order of the Civil Aeronautics Board ("C. A. B."), the federal agency whose approval is required under the Federal Aviation Act of 1958 (49 U. S. C. §§ 1301-1542) before a merger can be concluded in the air transport industry. The order of the C. A. B. was affirmed by the Court of Appeals in *Northwest Airlines, Inc.* v. *C. A. B.*, 303 F. 2d 395 (C. A. D. C., 1962).

The Federal Aviation Act authorizes the C. A. B. to condition its approval of a merger upon such terms and conditions as it shall find to be just and reasonable. (Section 408(b), Federal Aviation Act; 49 U. S. C., § 1378(b)).

During the course of the proceedings before the C. A. B., petitioner Brotherhood—which participated as an intervenor—asked the C. A. B. to impose on United, as a condition of the merger, a collective bargaining agreement which Brotherhood then had with Capital respecting a group of Capital employees. United had advised the C. A. B. that it did not intend to assume any Capital labor agreements. The C. A. B. refused to impose the condition requested by Brotherhood, stating in its opinion accompanying its order approving the merger:

> ". . . Capital and United should jointly or severally give at least forty-five days' notice to the employees

> who will be affected as a result of the merger by a change or loss of representation and collective bargaining agreement. This would then place the matter as a problem to be worked out between the companies and employees in accordance with regular procedures applicable to the matter of representation and agreement."

Such a notice was posted by United and Capital. (R. 21-23.)

Brotherhood petitioned the Court of Appeals for the District of Columbia to review the order of the C. A. B. insofar as it refused to impose on United its labor agreement with Capital, and moved that Court to stay the merger pending review. (C. A. D. C., Case No. 16,360.) The motion was denied in May, 1961, shortly before the June 1 effective date of the merger. After requests for extension of time and indefinite postponement of the hearing on the merits in the Court of Appeals, Brotherhood withdrew its petition on November 6, 1961. (R. 23-24.)

Three days later, on November 9, 1961, this action was initiated by Brotherhood by the filing of a complaint seeking a declaration that United was bound to the terms of the Brotherhood-Capital labor agreement, and to enjoin United from refusing to apply that agreement to "employees of Capital covered by that agreement who became employees of United upon consummation of the merger." (R. 2-13.)

United then moved to dismiss the complaint or for summary judgment. The grounds for this motion were: the cause involved a dispute as to who were the representatives under the Railway Labor Act of certain of its employees and hence exclusive jurisdiction lay with the National Mediation Board; if the requested relief were granted United would be required to treat with a bargaining representative for a minority of a craft or class, contrary to the provisions of the Railway Labor Act; that

the Brotherhood-Capital agreement revealed on its face that it could not be legally or practically applied to less than an entire craft or class; that another labor organization had representation rights for part of the group upon which Brotherhood was seeking to impose its agreement with Capital and hence this other labor organization was an indispensable party to the action. (R. 18-20.)

The District Court granted United's motion to dismiss, finding in its Order that "this Court is without jurisdiction over the subject matter for the reason that the same relates to a dispute as to who are the representatives under the Railway Labor Act of certain of the employees of the defendant * * * and that exclusive jurisdiction of said dispute is vested in the National Mediation Board. * * *" (R. 75.)

The Court of Appeals affirmed, relying primarily on the decision of this Court in *General Committee, etc.* v. *M.-K.-T. R. Co.*, 320 U. S. 323 (1943). (App. B. to Petition.)

The facts upon which the Court of Appeals based its determination are not in dispute.

Capital was by far the smaller of the two merged carriers. Immediately prior to the merger it had about 6,500 non-management employees and about 6,000 of these were represented by labor organizations under six agreements. United had 21,000 non-management employees, about 13,500 of these being represented by nine labor organizations under twelve agreements. (R. 21.)

Since it was the intention of United to integrate functionally Capital's operations into its own (rather than operate the former Capital system as a separate division), it was obviously necessary to have uniform pay scales and working conditions for all employees doing the same kind of work, side by side. This integration was essential because of the precarious financial position of Capital and

the overlapping of some of its routes with those of United. United determined that because it was to be the surviving carrier and because of the requirements of the Railway Labor Act, the terms and conditions of employment in effect at United prior to the merger would be applied to all employees—United and former Capital—after the merger. This meant that Capital employees falling within classifications represented by a labor organization at United would come under the labor agreement applicable to that classification, and those within classifications not represented by a labor organization at United would be subject to the uniform United personnel regulations which establish rates of pay and working conditions applicable to United employees in such classifications. (R. 21-22.)

The C. A. B. was advised of United's intention in this respect early in the merger proceedings. Many labor organizations, including Brotherhood, participated in the proceeding, and although the effect of United's position was that none of Capital's six labor agreements would survive the merger, only Brotherhood objected. As already noted, Brotherhood requested the C. A. B. to impose its contract with Capital on United as a condition of the merger. (R. 22.) It was thus clear from the outset that United did not intend voluntarily or contractually to assume the Brotherhood contract by reason of the United-Capital merger agreement. (See opinion of Court of Appeals below, Appendix B to Petition, page 3a.)

The classification of employees which Brotherhood represented at Capital was known as the craft or class of clerical, office, stores, fleet and passenger service employees, sometimes referred to as the clerical craft or class. Brotherhood had been certified as the collective representative of this craft or class at Capital pursuant to a National Mediation Board ("N. M. B.") election held in 1947. Capital maintained collective bargaining relations

with the Brotherhood continously from the time of its certification until the United-Capital merger. (R. 43.)

The Capital-Brotherhood agreement in effect immediately prior to the merger (R. 14)—the agreement Brotherhood sought to impose on United in this proceeding—recited the 1947 N. M. B. election and certification of Brotherhood as the basis for its recognition by Capital as the "sole and exclusive bargaining agent for all employees" of Capital in the clerical craft or class. (Agreement, Article I(a).)

Immediately prior to the merger there were approximately 2,700 employees at Capital in the clerical craft or class represented by Brotherhood as sole and exclusive bargaining agent and covered under this Agreement. The comparable group at United numbered approximately 10,000; the United group had never been organized into a single craft or class as had been the case at Capital, although part of this group had been organized pursuant to a 1945 National Mediation Board election at United. As a result of this election two separate groups were established for collective bargaining purposes, the cargo clerks and handlers, and the stockroom attendants. At Capital, employees performing work in these classifications were included in the clerical craft or class represented by Brotherhood.

Since 1948 these two separate classifications have been represented at United by the International Association of Machinists ("IAM"). The cargo clerks and handlers are now known as ramp employees and the stockroom attendants are known as stores employees. These two separate groups are now under a single collective bargaining agreement which United maintains with the IAM known as the "Ramp and Stores Agreement." (R. 24-25.)

Immediately prior to the merger, 2,200 of the 10,000

employees of United in the grouping comparable to the clerical craft at Capital were under the IAM Ramp and Stores Agreement. The remaining approximately 7,800 employees were not represented by a labor organization and were covered under United's personnel regulations. (R. 25.)

Upon the consummation of the merger, the former Capital employees performing work covered under the United-IAM Ramp and Stores Agreement came under that Agreement. Consequently about 530 of the 2,700 former Capital employees who were represented by the Brotherhood at Capital are now represented by the IAM at United. Letters of Agreement relating to the integration of United and Capital employees under the Ramp and Stores Agreement were entered into between United and the IAM on June 23, 1961. (R. 25-26.)

The remaining 2,170 former Capital employees who were represented by Brotherhood at Capital and who are not under a collective bargaining agreement at United have been integrated into United's system and are now working side by side with the 7,800 unorganized United employees in the same job classifications, and all are subject to the same pay schedules, benefits and working conditions established under United's uniform personnel regulations. (R. 26.)

As a result of coming under United's uniform personnel regulations, these Capital employees who were formerly under the Capital-Brotherhood clerical agreement have realized an improvement in their pay and related benefits. The overall wage scales at United at this time were higher than those which existed at Capital prior to the merger. The maximum vacation for the employees at Capital under the Brotherhood agreement was three weeks per year after 12 years of service—a level of vacation reached at United after ten years, where the maximum vacation is 20 days per year; at Capital these employees

paid for the entire cost of their uniforms—United paid one-half of the initial cost; United offered these employees a stock purchase plan in which it matches 15% of the employee contribution—Capital had no such plan; United paid one-half of the cost of accident and sickness insurance for these employees—Capital paid none; they received $5,000 of free group life insurance from United and the option to purchase additional life insurance to $10,000—Capital offered them an option to purchase $7,000 of insurance and provided none free; these employees became eligible to participate in United's retirement income plan which provides more liberal benefits than were available at Capital. (R. 26-27.) In addition, these former Capital employees were given full seniority credit for their prior service with Capital. (R. 27.)

Although the C. A. B. declined to require United to assume the Capital-Brotherhood clerical agreement, it did impose labor protective provisions as a condition of its approval of the merger. These provided additional protection to the rights of these employees. Among these were pay adjustments for employees who were placed in a worse pay position as a result of the merger; reimbursement for expenses incident to transfers resulting from the merger; arbitration machinery to resolve disputes arising under the protective provisions. (R. 33-40.)

Finally, the C. A. B. reserved jurisdiction in its order approving the merger to "make such amendments, modifications, and additions to the protective labor conditions • • • as circumstances may require." (R. 32.)

These benefits and protections which the former Capital employees received as a result of the merger may be contrasted with the position they would have been in had the merger not taken place. The Court of Appeals which affirmed the C. A. B. order found that the merger was

an "emergency crash measure," and quoted from the C. A. B. opinion that "Capital is financially *in extremis* and will not survive if the merger is disapproved." *Northwest Airlines* v. *C. A. B.*, 303 F. 2d 395, 397, 398. (C. A. D. C., 1962.)

Two weeks after the district court issued its opinion dismissing the complaint for lack of jurisdiction, Brotherhood filed its application with the National Mediation Board seeking representation rights for the same craft or class it had represented at Capital, with certain exceptions. A dispute developed between the IAM and Brotherhood over their respective interests, and subsequently United filed a suit to restrain the N. M. B. from proceeding with an election on the Brotherhood application unless it accorded United status as a party in interest on the issue of the appropriateness of the craft or class and unless the N. M. B. would use a ballot which would allow employees the alternative of voting for no representation. United's complaint was dismissed, and it appealed this dismissal. (C. A. D. C., No. 17,777.) After the dismissal of United's complaint, a group of affected employees brought a similar suit and were granted an injunction against the N. M. B. using a ballot which provided no space for a vote against representation, and the N. M. B., in turn, appealed this decision. (C. A. D. C., No. 18,068.) These appeals were consolidated and were argued in the Court of Appeals on February 13, 1964.

ARGUMENT.

I.

THE DECISION OF THE COURT OF APPEALS WAS NOT ERRONEOUS.

The Court of Appeals found that "although the suit is cast in the form of an action under the law of contracts, it in fact involves a representation dispute." (Appendix B to Petition, p. 7a.) This conclusion was eminently sound under the facts here. That being so, under the teaching of the 1943 trilogy relating to the scope of judicial intervention in disputes under the Railway Labor Act, the district court lacked jurisdiction to determine this dispute. *Switchmen's Union of North America* v. *National Mediation Board*, 320 U. S. 297 (1943); *General Committee, etc.* v. *M.-K.-T. R. Co.*, 320 U. S. 323 (1943); *General Committee, etc.* v. *Southern Pacific Co.*, 320 U. S. 338 (1943).

The complaint here asked for an "injunction enjoining United from continuing its refusal to apply the provisions of the collective bargaining agreement of August 3, 1959, between the Brotherhood and Capital to employees of Capital covered by that agreement who became employees of United upon consummation of the merger." (R. 12-13.)

But upon consummation of the merger a substantial part of these employees—530 of 2700—became part of another bargaining unit then in existence at United, represented by another labor organization and subject to a different collective bargaining agreement. The remaining former Capital employees became fully integrated with approximately 7,800 United employees, and subject to the same rates of pay and working conditions as were in effect

for the United employees—wages and working conditions which were generally more beneficial than those which had been in effect under the Brotherhood agreement at Capital.

Thus there are conflicting claims by two unions respecting jurisdiction over the work performed by many of these employees; there is a dispute as to the representative status of Brotherhood for a minority of a craft or class; there is a dispute as to the composition of the craft or class. Under the decisions of this Court, these issues may not be resolved in the judicial arena—and jurisdiction may not be created by the simple expedient of describing these issues as involving "validity of contract" as petitioner attempts.

The two *General Committee* cases, 320 U. S. 323 (1947) and 320 U. S. 338 (1943), involved contract disputes between the Brotherhood of Locomotive Engineers, representing engineeers, and the Brotherhood of Locomotive Firemen and Enginemen, representing firemen. The Firemen had negotiated agreements with the carriers concerning the promotion of firemen to engineer positions, which were inconsistent with the method worked out between the carriers and the Engineers. The Engineers brought actions for declarations that the collective bargaining agreements of the Firemen were invalid. Thus "validity of contract" was there involved.

In holding that there was no jurisdiction to resolve the controversy, this Court stated:

> "It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solution to the courts. * * * However wide may be the range of jurisdictional disputes embraced within § 2, Ninth, Congress did not select the courts to resolve them. * * * If the present dispute falls within § 2, Ninth, the administrative

remedy is exclusive. If a narrower view of §2, Ninth is taken, it is difficult to believe that Congress saved some jurisdictional disputes for the Mediation Board and sent the parties into the federal courts to resolve the others. • • •

"In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforcible in the courts should be implied. Unless that test is met the assumption must be that Congress fashioned a remedy available only in other tribunals. There may be as a result many areas in this field where neither the administrative nor the judicial function can be utilized. But that is only to be expected where Congress still places such great reliance on the voluntary process of conciliation, mediation and arbitration. • • • Courts should not rush in where Congress has not chosen to tread." *General Committee, etc. v. M.-K.-T. R. Co.*, 320 U. S. 323, 336-37.

A recent decision of the Court of Appeals for the Fourth Circuit, *Division No. 14, Order of Railroad Telegraphers* v. *Leighty*, 298 F. 2d 17 (C. A. 4, 1962), *cert. denied* 369 U. S. 885 (1962), discussed the "validity of contract" theory in connection with a dispute arising out of the merger of the Virginian Railway and the Norfolk & Western Railroad. There the Interstate Commerce Commission, which has authority to approve railroad mergers, had left to the bargaining representatives the integration of seniority of the affected employees. The telegraphers of each railroad were represented by the Order of Railroad Telegraphers—Division 13 of the ORT representing the Virginian telegraphers, and Division 14, ORT representing the Norfolk & Western telegraphers. The two Divisions were unable to agree on an integration plan, and the national president of the ORT then entered into a collective bargaining agreement with the merged railroad, com-

promising the positions of each of the Divisions. Division 14 then brought suit to enjoin the railroad from acting under this agreement, relying on the union constitution and the provisions of the collective bargaining agreement between Division 14 and the Norfolk & Western relating to seniority rights of men on newly acquired lines. In holding that it lacked jurisdiction to reach the merits of the controversy, the Court stated:

> ". . . [I]n view of the General Committee cases, the conclusion is inescapable that district courts have no such authority where 'validity' of the contract depends upon the merits of a representation dispute." 298 F. 2d 17, at 20.

To avoid the obvious consequences of the conflicting IAM bargaining status for 530 former Capital employees, Brotherhood says in its petition that the IAM and United had the right after June 1, 1961 (the merger date) to negotiate for these employees. But its complaint filed more than five months later asked that United be required to accept the Brotherhood contract for the Capital employees covered by its terms who became United employees on June 1, 1961.

Brotherhood's dilemma is that if it forthrightly asks that its contract be applied to all former Capital employees —as it does in its complaint—then the jurisdictional dispute with the IAM is patent. But if it excludes these 530 former Capital employees now under the United-IAM contract, it is seeking a renegotiation of the Capital-Brotherhood agreement and a modification of the craft or class it purports to cover. This tack places Brotherhood in another untenable position—for then it is asserting its own prior representation rights to modify the Capital contract and cannot continue to claim that the action involves only "validity of contract" and not representation issues. Its position is further complicated by the

fact that it is then asking for not only a modified craft or class (its old Capital clerical craft less the ramp and stores employees represented by the IAM), but is asking for a minority craft or class—the 2,200 former Capital employees out of a total of 10,000 combined United and former Capital employees performing the same work side by side.

The 1934 amendments to the Railway Labor Act added the representation disputes settlement procedures of Section 2, Ninth, created the National Mediation Board, and clarified employee rights to organize and bargain collectively. 48 Stat. 1185. The draftsman of these amendments was Joseph B. Eastman, Federal Coordinator of Transportation, whose comments on the amendments have been accepted as authoritative by this Court. See *Switchmen's Union of North America* v. *National Mediation Board*, 320 U. S. 297, 302-3 (1943).

In defining the "craft or class" concept as used in Section 2 of the Act—the unit of employees for which a majority was given the right to determine the representative for the craft or class—Commissioner Eastman testified:

> "Well, my understanding of the way in which the words 'craft' or 'class' have been defined in the past, is that they would cover the entire service of any particular carriers. That is, it would not be a class of employees, to pick out those that did work in a particular shop, but it would be all of the employees of the carrier, no matter in what shop they were located, who did that particular kind of work." Hearing on H. R. 7650, House Committee on Interstate and Foreign Commerce, 73d Cong. 2d Sess. (1934), p. 57.

In discussing the question of the maintenance of minority crafts or classes the Court of Appeals for the District of Columbia in *Switchmen's* stated:

"While this section [Section 1, Fifth of the Railway

> Labor Act] may give some stability to existing craft or class arrangements, it does not do so to the extent of allowing the maintenance of a particular representation arrangement which encompasses less than the whole of an established and recognized craft or class." *Switchmen's Union of North America* v. *National Mediation Board*, 135 F. 2d 785, 793 (C. A. D. C., 1943), *rev'd on jurisdictional grounds*, 320 U. S. 297 (1943).

Thus, a minority craft or class is not contemplated by the Railway Labor Act, and the obligation to bargain with such a craft cannot be imposed on United—except perhaps as a condition to merger approval by the C. A. B., in which event United would have had the alternative to proceed with the merger on that condition or to back off. See *Northwest Airlines, Inc.* v. *C. A. B.*, 303 F. 2d 395, 398 (C. A. 2, 1962).

Cases such as *City of Nashville, Tennessee* v. *United States*, 155 F. Supp. 98 (M. D. Tenn., 1957), *aff'd per curiam* 355 U. S. 63 (1957), cited at page 22 of the petition, are not relevant to the question of the jurisdiction of the district court here—since that case involved the imposition of a collective bargaining agreement by the Interstate Commerce Commission as a condition to approving the merger of two railroads. The C. A. B. would have had such power in approving the United-Capital merger, and the Court of Appeals for the District of Columbia would have had authority to review such a condition on petition to review the C. A. B. order. But the proceeding here was not one to review the merger. It was a proceeding which raised fundamental representation and jurisdictional questions, and "Congress * * * chose not to leave their solution to the courts." *General Committee, etc.* v. *M.-K.-T. R. Co.*, 320 U. S. 323, 336 (1943).

II.

PETITIONER WAS NOT AND IS NOT WITHOUT A FORUM.

Even if it were a fact that petitioner is left without a forum in which to resolve its complaint this would not be adequate to confer jurisdiction since ". . . There may be * * * many areas in this field where neither the administrative nor the judicial function can be utilized." *General Committee, etc.* v. *M.-K.-T. R. Co.*, 320 U. S. 323, 337.

But petitioner was not without a forum. It could have pursued its petition in the Court of Appeals for the District of Columbia to review the C. A. B. order which declined to impose the Capital agreement on United as a condition of approval of the merger. Its suggestion in its petition that it withdrew from that proceeding "when the Board [C. A. B.] made it clear it had simply declined to act on the Brotherhood request" (Pet. 7 fn. 3), does not justify petitioner's failure to have pursued that remedy. The C. A. B. opinion clearly recognized that the effect of its order would be that the Capital-Brotherhood contract would not be assumed by United on consummation of the merger and required the giving of notice to employees "who will be affected by a change or loss of representation and collective bargaining agreement." (R. 23.) In any event, it took the Brotherhood from May 19, 1961, when it filed its petition in the Court of Appeals to review the C. A. B. order, until November 6, 1961, to decide to withdraw from that proceeding. (C. A. D. C., Case No. 16,360; R. 23-24.)

Another forum available to petitioner is the National Mediation Board. Petitioner has invoked the procedures of this agency seeking representation rights for the entire group of employees at United in the craft or class it formerly represented at Capital. As indicated above, election

on this application has been delayed pending resolution of appeals arising out of separate suits brought by United and a group of its employees. These suits do not challenge the jurisdiction of the National Mediation Board over the representation dispute, but only its procedures in making craft or class determinations and its form of ballot, which does not allow an eligible employee the alternative of voting for no representation.

III.

THERE IS NO CONFLICT OF DECISIONS.

Petitioner claims the decision below is in conflict with the decision of the Second Circuit in *Livingston* v. *John Wiley & Sons, Inc.*, 313 F. 2d 52 (C. A. 2, 1963), *cert. granted* 373 U. S. 908 (1963), and of this Court in *International Association of Machinists* v. *Central Airlines, Inc.*, 372 U. S. 682 (1963).

Not only do these decisions present no conflict with the decision below, but they destroy one of petitioner's basic arguments—that United is bound by the Capital-Brotherhood contract because of Delaware corporation law. (R. 6, 12; Pet. 2, 12-13.)

In *Livingston* the Court of Appeals for the Second Circuit held that arbitration could be compelled under Section 301 of the Labor Management Relations Act, 29 U. S. C. § 185, of issues relating to the existence of "property rights" or "vested rights" which were alleged to have arisen under a collective bargaining agreement in effect prior to a merger. Section 301 of the Labor Management Relations Act, however, expressly confers federal jurisdiction in "suits for violation of contracts between an employer and a labor organization." There is no comparable provision in the Railway Labor Act which governs labor relations in the railroad and airline industries. *Larsen* v.

American Airlines, Inc., 313 F. 2d 599, 603 (C. A. 2, 1963); *International Association of Machinists* v. *Eastern Airlines, Inc.*, 320 F. 2d 451, 455 (C. A. 5, 1963).

In addition, the merger involved in *Livingston* was not subject to federal regulation as was that between United and Capital, where the C. A. B. imposed full labor protective provisions in favor of the affected employees. The benefits provided by these provisions are themselves subject to arbitration, and the C. A. B. order approving the United-Capital merger reserved jurisdiction to "make such amendments, modifications, and additions to the protective labor conditions imposed . . . as circumstances may require." (Rec. 33; Labor Protective Provisions, Sec. 13, R. 40.)

In any event, aside from the fact that the *Livingston* case arose under the Labor Management Relations Act where there is an express grant of federal jurisdiction, the Court there specifically noted in support of its decision that "There is here no rival union, whose rights would be interfered with by the Union's pressing of these employee claims." 313 F. 2d 52, at 58.

International Association of Machinists v. *Central Airlines, Inc.*, 372 U. S. 682 (1963), held that an award of a System Board of Adjustment for an air carrier was federally enforceable. *Central Airlines* raised no question of employee representation nor any issue of conflicting labor organization claims. The contract between the airline and the union was not in dispute. The only question was whether the action raised federal or state issues.

Both *Central Airlines* and *Livingston* make clear that in this area federal law is applicable and not state law. In the *Livingston* case, the court expressly held that the New York corporation law cited by the union to the effect that the consolidated corporation would be deemed to have

assumed all liabilities of the constituent corporations "is clearly not binding upon us." 313 F. 2d 52, at 56. The applicable federal law here has been set forth in the *General Committee* cases—there is to be no judicial intervention in representation and jurisdictional disputes arising under the Railway Labor Act.

One of the most recent reaffirmations of this doctrine is by the same court which decided *Livingston* v. *John Wiley & Sons, Inc.* One week before that decision the Court of Appeals for the Second Circuit decided *Flight Engineers' International Association* v. *Eastern Air Lines, Inc.*, 311 F. 2d 745 (C. A. 2, 1963), *cert. denied* 373 U. S. 924 (1963). There the Flight Engineers sought to restrain the carrier from giving effect to a contract with the Air Line Pilots Association which related to terms and conditions of employment for flight engineer positions. The Court cited from the *General Committee* cases and concluded:

> "On the authority of these cases it is clear that the district court was without jurisdiction to grant the relief which the plaintiff sought. The doubtful claims of representation and the jurisdictional controversy are subjects upon which the [Railway Labor] Act provides for non-curial treatment. The courts must refrain from interfering in a field from which Congress has excluded them." 311 F. 2d 745, at 748.

See also *Ruby* v. *American Airlines, Inc.*, 323 F. 2d 248 (C. A. 2, 1963), *cert. denied* 32 U. S. L. Week 3287 (U. S. Feb. 18, 1964), where it was held that "the courts cannot properly require an employer to bargain with a previously designated representative in the face of a substantial representation dispute requiring the intervention of the Mediation Board under § 2 Ninth [of the Railway Labor Act] * * * *" 323 F. 2d 248, at 255.

CONCLUSION.

The result below is not only legally correct but realistic and equitable. The Brotherhood-Capital contract clearly contemplated that it would be applicable only to an entire craft or class of employees. The functional merger of United and Capital employees made impossible the application of different working conditions to each group. And it would have been inequitable for United to have applied to all its employees after the merger the terms in effect at Capital, which in almost every instance were inferior to those in effect at United.

The advantages to the affected employees in receiving the superior United benefits make clear that the underlying interest of petitioner here is not that of the employees whose "contract rights" it professes to be asserting, but rather its own interest as a bargaining representative seeking to preserve "maintenance of union membership and check-off of union dues." (pet. 6.)

The various administrative and judicial maneuvers of petitioner have been used by it in its campaign to organize the entire group of employees—United as well as former Capital. (R. 28, 41.) It dismissed its petition to review the C. A. B. merger order in the District of Columbia Court of Appeals after allowing that suit to remain on file for six months, and three days later started this action in the Ohio District Court. Two weeks after the decision of the district court dismissing its complaint, it instituted a representation proceeding with the National Mediation Board.

It is before this Board that its representational claims

should be ultimately settled, not in this Court. It is, therefore, respectfully requested that the petition be denied.

Respectfully submitted,

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